In the High Court of Uttarakhand, at

Nainital

Criminal Appeal No. 374/2003.

Sohan Singh S/o Sher Singh Bisht
R/o Village Raj Gaon, Patti Kemar,
Post Office Kothiyara (Pilkhi),
District Tehri Garhwal ... Appellant.

Vs.

State of Uttaranchal ..... Respondent.

AND

Criminal Jail Appeal No. 359/2003.
Sohan Singh S/o Sher Singh Bisht
R/o Village Raj Gaon, Patti Kemar,
Post Office Kothiyara (Pilkhi),
District Tehri Garhwal ... Appellant.

Vs.

State of Uttaranchal ..... Respondent.

Sri Lokendra Dobhal, learned counsel for the appellant.
Sri Sohail A. Siddiqui, learned A.G.A. for the respondent

Hon'ble B.C. Kandpal, J.

Both these appeals have been preferred by the appellant against the judgment and order dated 21-10-2003, passed by Sessions Judge, Tehri Garhwal, in Sessions Trial No. 14 of 2001, whereby the accused Sohan Singh was convicted U/Ss 307 and 354 I.P.C. and sentenced to ten years' R.I. and a fine of Rs. 10,000/- U/S 307 I.P.C. and in default of payment of fine to further undergo one year's R.I. and imprisonment of one years' R.I. U/S 354 I.P.C. The sentences were to run concurrently. As both the appeals have been preferred by the appellant from the same judgment, hence these were taken together and are being decided by this common judgment.

2- Brief facts of the case, as emerged out form the record, are that on 12-6-2001 at about 5-20 P.M. Smt. Laxmi and Km. Manju, wife and daughter respectively of Sohan Singh were cutting grass in the forest of village Konti, District Tehri Garhwal, the accused Sohan Singh attacked them with an axe with the intention to kill them, due to which both of them sustained grievous injuries on their persons. On alarm being raised by the injured, Km. Pinki, Smt. Sona Devi, Smt. Sita Devi W/o Bharat Ram, Smt. Sita Devi W/o Kunwar Singh, Smt. Prema Devi W/o Govind Singh, Smt. Prema Devi W/o Chandan Singh, Smt. Dharma Devi, Smt. Rukmani Devi, Smt. Sundra Devi and Smt. Kedari Devi came there and witnessed the occurrence. Both the injured Smt. Laxmi Devi and Km. Manju were taken to Primary Health Centre, Pilkhi and seeing their precarious condition, they were referred to Doon Hospital, Dehradun. The written report, ext. Ka.2, was lodged by one Bhagwan Singh at Patwari Circle Koti, District Tehri Garhwal on 13.6.2001 at about 12 noon. On the basis of the written report the Patwari Sri Asha Ram Panuli (P.W.5) drawn check report, Ext. Ka.7 at the Patwari Chowki and registered a case U/S 307 I.P.C. against the accused vide G.D. Ext. Ka.8. He visited the place of the occurrence and prepared site plan, Ext. Ka.9. The I.O. took into custody the shawl, Chappal, Dranti, hair of head, Kundal of ear and Mala of Stm. Laxmi Devi and Km. Manju vide recovery memo, Ext. Ka.10. He also seized the blood-stained and plain earth of the place of the occurrence vide memo Ext. Ka.11. The Investigating Officer arrested the accused and prepared arrest memo, Ext. Ka.12. He also took into possession the axe, weapon of assault and clothes of the accused, vide recovery memo Ext. Ka. 13 and also prepared site-plan, Ext. Ka.14 of the place from

where the axe and clothes of the accused were recovered. C.T. scan of the injured Km. Manju and Smt. Laxmi was conducted and these reports are Ext. Ka.17 and Ka. 18. respectively. Prosecution also brought on record the expert report with respect fracture of Smt. Laxmi, Exts. Ka. 19 to Ka.21 and that of Km. Manju Ext. Ka.22. Exts. Ka. 23 to Ka.26 are the blood examination report of Smt. Laxmi Devi.

3- The prosecution also got proved the various articles seized during investigation by the witness P.W.1, Smt. Laxmi Devi. These articles are photo hand Laxmi Devi, Photo Laxmi Devi, Photo Km. Manju, Saree, Petticoat, Paijama, Muffler(safa), Kundal, piece of flesh, Mala, Comb, hair, Chappal of Km. Manju, Chappal of Smt. Laxmi, Dranti big size, Dranti small size, Axe, and Chadar, material exhibits 1 to 18 respectively. The Investigation of the case was transferred to Chandra Mohan Patwari (P.W.7) who after completing the investigation, submitted charge sheet, Ext. Ka. 16 against the accused.

4- On committal of the case of the Court of Sessions, charges U/Ss 307 and 354 I.P.C. were framed against the accused. He pleaded not guilty to the charges and claimed to be tried.

5- The prosecution in order to prove its case, produced as many as 8 witnesses. Of these, P.W.1 Smt. Laxmi and P.W.2, Km. Manju are the injured eyewitnesses. P.W.3, Bhagwan Singh is the complainant of the case. P.W.4, Dr. Manoj Kumar Sharma, has medically examined the injured persons. P.W.5 is Asha Ram Painuli Patwari who prepared the check F.I.R. and registered the case against the accused. He investigated the case at the initial stage. P.W.6 Smt. Sita Devi is the witness of fact whereas

P.W.7, Chandra Mohan, is the second I.O. of the case who after completing the investigation submitted charge sheet in the case. P.W.8, Dr. Mahesh Kuriyal has done the C.T. scan etc. of the injured persons.

6- Dr. Manoj Kumar Sharma, P.W.4, has medically examined the injured Km. Manju at Primary Health Centre, Pilkhi, District Tehri Garhwal on 12-6-2001 at 9.00 P.M. and found following injuries on her person:-

1- 10cmx 1cm x 1cm sized wound on left lateral side of back of scalp about 3cn, above the ear.

2- Excessive blood loss from wound.

In the opinion of the Medical Officer the injury was fresh, caused by some sharp object. He advised x-ray of skull so as to determine the nature of the injury. The Medical Officer prepared injury report, Ext. Ka.3.

According to the C.T. Scan report of this injured Km. Manju, the complex left occipital bone was fractured and she was kept in ICU for treatment. The injury of this injured was declared to grievous in nature. The medico-legal report of this injured is Ext. Ka.4.

The another injured Smt. Laxmi Devi was medically examined by Dr. Manoj Kumar Sharma, at 8.30 P.M. on 12.6.2001 at P. H.C. Pilakhi, District Tehri Garhwal, and following injuries were detected on her person:-

1- 6cm x 2cm x 1cm sized wound on right lower side of scalp (just back to right ear).
2- 10cm x1cm x 1cm sized wound on right lower side of scalp (1cm lower to the injury No. 1.).
3- 'L' shaped 3cm x 3cm x ½ cm sized lacerated wound on dorsum of left palm.

In the opinion of the doctor the injuries were fresh and caused by some sharp object. X-ray and C.T. Scan was advised. The doctor prepared injury report Ext. Ka.5.

In the C.T. scan of this injured fracture was detected of the right occipital bone. According to the X-ray of left hand, fracture of 3rd, 4th, 5th meta tarsal with nail seen. The medico-legal report of the injured is Ext. Ka.6.

7- The accused in his statement U/S 313 Cr.P.C. has denied the prosecution allegations and alleged that he has been wrongly implicated in the case. No evidence was adduced by the accused in his defence.

8- The learned Sessions Judge on appreciation of evidence and after having heard learned counsel for the parties, held the accused/appellant guilty for offences U/Ss 307 and 354 I.P.C. and sentenced him ten years R.I. and fine of Rs. 10,000/- U/S 307 I.P.C. and in default of payment of fine to further undergo one years' imprisonment and one year's R.I. U/S 354 I.P.C. The sentences were run to concurrently.

9- Feeling aggrieved the accused/appellant has preferred these appeals before this Court.

10- I have heard the learned counsel for the parties and perused the record.

11- The first contention raised by the learned counsel for the appellant is that the First Information Report in this case is delayed and no explanation for the same has been extended by the prosecution. Therefore, there are all the possibilities of manipulation and false implication of the appellant.

12- Perusal of the record shows that the occurrence took place on 12.06.2006 at about 05:20 p.m. while the - report was made to the Patwari of the Circle on

13.06.2001 at 12:00 p.m. From the First Information Report, it is clear that the same was scribed by one Bhagwan Singh (P.W.3) on 12.06.2001 which was given to Patwari Circle in the morning of 13.06.2001 at 05:00 a.m. The evidence also reveal that after the occurrence, the injured Smt. Laxmi as well as Km. Manju were sent to Primary Health Centre, Pilkhi and thereafter they were referred to Doon Hospital, Dehradun in view of their precarious condition. The First Information Report also reveals that after completion of the above mentioned formalities, the First Information Report was lodged by Bhagwan Singh (P.W.3), therefore, under these circumstances where the condition of the injured was serious and they were unconscious, it cannot be said that there is a delay in lodging the First Information Report.

13- Looking into the circumstance of the case, it is expected from a normal man that the he will firstly take care of the injured persons whose condition was precarious and then will take legal recourse. These is nothing in the evidence by which it could be presumed that there is any manipulation or fabrication in lodging the First Information Report against the accused/appellant. Moreover, the delay in lodging the First Information Report is not, such which may extend any benefit to the accused/appellant. Therefore, the delay whatsoever is there in the instant case is not going to dislodge the prosecution case.

14- Learned counsel for the appellant has further contended that there is nothing with respect to outrage the modesty of Smt. Laxmi in the First Information Report and as such it is the development incase which castes a shadow of doubt on the entire prosecution case.

15- I do not agree with the contention raised by the learned counsel for the accused/appellant. It is apparent that the First Information Report was lodged by Bhagwan Singh while victim Smt. Laxmi was unconscious, therefore, it was not possible for the complainant to scribe those facts which did not occur before him. It is clear from the evidence of Smt. Laxmi that the incident of outraging her modesty occurred when she was alone. Therefore, in the light of the statement of Smt. Laxmi it is quite clear that it was not possible for anybody else to tell the scribe of the First Information Report with regard to the incident of outraging the modesty. Therefore, absence of this fact in the First Information Report that the accused/appellant tried to outrage the modesty of Smt. Laxmi does not amount to any development in the prosecution case. It has come in the evidence of Smt. Laxmi that the accused appeared at the scene of the occurrence and started taking off the *Sari* of Smt. Laxmi and threw her *Sari* on the ground and thereafter took her away to some distance. It has also come in the evidence of Smt. Laxmi that the accused/appellant caught hold the hand of her and when she did not allow him to do anything the accused/appellant assaulted her. Therefore, it is quite clear that the accused/appellant used criminal force on Smt. Laxmi with intent to outrage her modesty. The culpable intention of the accused/appellant is quite evident from the material available on record.

16- The act of the accused in putting off the *Sari* of Smt. Laxmi shows his intention, therefore, under these circumstances the offence under Section 354 I.P.C. against the accused is established beyond reasonable doubt.

17- The evidence further shows that the oral testimony of Smt. Laxmi as well as Km. Manju finds complete corroboration with the medical evidence. Smt. Laxmi (P.W.1) has stated that on the date, time and place of occurrence while she was cutting grass in the jungle with her daughter – Km. Manju and other ladies of her village, in the meantime, accused/appellant – Sohan Singh came to her having Axe in his hand and tried to put off her *Sari* and on her protest he assaulted her with Axe due to which she sustained injury on her neck, head and hand. She has further deposed while her daughter – Km. Manju came in rescue the accused/appellant also assaulted her with that Axe. She has further deposed that due to the injuries she remained in the hospital for more than one month. She has also deposed that accused/appellant put off her *Sari* and caught hold her hand and tried to outrage her modesty for which she denied resulting the accused/appellant assaulted with Axe.

18- Km. Manju (P.W.2) has also deposed that accused/appellant – Sohan Singh attempting to kill her mother and her, resulting that she and her mother sustained injuries. This witness has further deposed that accused/appellant also tried to outrage the modesty of her mother.

19- Therefore, it is quite clear from the evidence of Smt. Laxmi and Km. Manju that by the blow of axe, which had been struck by the accused on their person, Smt. Laxmi become unconscious on the spot. The injuries on the person of Smt. Laxmi and Km. Manju are sufficient to connect the accused/appellant with the commission of crime.

20- Apart of the evidence of Smt. Laxmi and Km. Manju there is other evidence of Smt. Sita Devi (P.W.6) who has deposed that she saw accused/appellant – Sohan Singh assaulting Smt. Laxmi by an Axe. She has also deposed that the moment she saw Sohan Singh assaulted Smt. Laxmi by Axe, she became unconscious. She has also deposed that she recognised accused/appellant very well. Therefore, the evidence of Smt. Sita Devi who is an independent witness is sufficient to hold that the accused/appellant attempted to cause the death of Smt. Laxmi by assaulting here with Axe.

21- Learned counsel for the appellant has invited my attention towards some minor contradictions in the statement of the witnesses but these contradictions are not such which create any doubt with regard to the act of the accused/appellant.

22- Further the evidence of Dr. Manoj Kumar Sharma (P.W.4) is quite clear that the injuries of the injured persons were grievous and it could be fatal to their lives. Dr. Manoj Kumar Sharma (P.W.4) examined these two injured persons and prepared their medical examination reports. This witness have deposed that the injuries of Smt. Laxmi and Km. Manju could be caused by sharp edged weapon like Axe. He has also deposed that the injuries of the injured persons were not possible due to fall. Dr. Mahesh Kuriyal (P.W.8) has also deposed that there was a fracture in the head of Km. Manju as well as there was also a fracture in the head of Smt. Laxmi and her brain matter was protruding out. Dr. Mahesh Kuriyal has further deposed that the fracture in the head of the injured persons was sufficient to cause their death and the injuries were fatal to their lives.

23- Thus the ocular version of the injured witnesses as well as the independent witness produced by the prosecution finds full support from the medical report as well as X-ray reports and the evidence of the doctors. Nothing has come out in the statement of the doctors which could create any doubt with regard to the injuries being fatal. The evidence clearly shows that the blow of Axe had been struck by the accused/appellant on the head of the victims, which is a vital part of the body. The victims could be survived on account of the immediate medical aid provided to them. Therefore, there is sufficient evidence available on record to hold that the accused/appellant – Sohan Singh committed an offence within the ambit of Section 307 I.P.C. as well as offence which falls within the ambit of Section 354 I.P.C.

24- I do not find any perversity in the impugned judgment and order passed by the trial court convicting and sentencing the accused/appellant for the offences under Section 307 and 354 I.P.C.

25- The accused/appellant has rightly been convicted and sentenced for the offence committed by him by the trial court. I do not find any ground to interfere in the impugned judgment and order dated 21.10.2003 passed by the trial court.

26- Learned counsel for the appellant has submitted that the accused/appellant is in jail for the last about 5 years, therefore, keeping in view the period of sentence undergone by him a lenient view may be adopted in this case.

27- I do not find any force in the arguments advanced by the learned counsel for the appellant. The manner in

which the incident has taken place clearly shows the mental status of the accused/appellant who firstly tried to outrage the modesty of the helpless women and when she denied to the wishes of the accused/appellant she was assaulted with an Axe causing grievous injuries on her person. The accused/appellant caused three injuries on the person of Smt. Laxmi as well as one injury on the person of Km. Manju and on account of the injuries sustained by the victims there was a fracture of the right spinal bone as well as fracture of third, forth and fifth metatarsal bone of Smt. Laxmi and there was a fracture on the left occipital bone of Km. Manju. These injuries were on vital part of the body and were sufficient to cause the death of the victims in the ordinary course.

28- Therefore, I do not find any ground to extend any leniency in favour of the accused/appellant. The trial court has rightly awarded the sentence to the accused/appellant and I do not find any ground for interference in the same.

29- Therefore, the appeals lack merit and are liable to be dismissed.

30- Accordingly, the appeals are dismissed. The conviction and sentence passed by the trial court vide judgment and order dated 21.10.2003 is hereby maintained.

(B.C. Kandpal, J.)

Dated: 31-8-2006

Aswal.